

JAN 13 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****LAWRENCE L.B. BIRKS,****Plaintiff - Appellant,****v.****ANTHONY A. LAMARQUE; et al.,****Defendants - Appellees.****No. 04-16284****D.C. No. CV-01-02691-SBA****MEMORANDUM***

**Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding**

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

California state prisoner Lawrence L.B. Birks appeals pro se the district court's judgment dismissing his 42 U.S.C. § 1983 action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

failure to state a claim under the screening provisions of 28 U.S.C. § 1915A, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly determined that Birks's complaint failed to state a claim for the reasons stated in the court's orders filed September 26, 2002 and May 27, 2004.

The district court did not abuse its discretion by dismissing Birks's complaint without leave to amend because it had previously provided him an opportunity to cure the deficiencies of his complaint, but he failed to file an amended complaint. *See Eldridge v. Block*, 832 F.2d 1132, 1136 (9th Cir. 1987).

The district court also did not abuse its discretion by denying Birks's request for counsel. *See Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997).

Birks' remaining contentions are without merit.

All pending motions are denied.

AFFIRMED.